

STATEMENT OF PURPOSE

RS20073

The purpose of this legislation is to amend the circumstances listed in Idaho's current Rape statute to add the circumstance of rape by fraud. Idaho Code § 18-6101 Rape defined, defines rape and the circumstances in which rape can occur. Section 18-6101(6) now states that rape can occur "where she (victim female) submits under the belief that the person committing the act is her husband, and the belief is induced by artifice, pretense, or concealment practiced by the accused, with the intent to induce such belief." The proposed change would add the circumstance "where she submits under the belief that the person committing the act is someone other than the accused, and the belief is induced by artifice, pretence or concealment practiced by the accused, with the intent to induce such belief."

In a recent decision, *State v. Zachary McGraw and Cielo Sanchez*, an Idaho District Court concluded the plain language of I.C. § 18-6101 required that a defendant could only be guilty of rape by fraud under the circumstance where she (victim female) submitted under the belief that the person committing the act is her husband. Thus, because the circumstance in this case did not involve a relationship of husband and wife but rather involved a relationship of boyfriend and girlfriend, the defendant could not be guilty of rape by fraud.

As it now stands, a defendant who rapes a female under the circumstance of fraud, can only be guilty of rape if the female submitted under the belief that the person committing the act is her husband. This legislation would close that loophole and provide protection to not only married women but non-married women as well. This amendment would make it so a defendant would be guilty of rape under the circumstance of fraud, when a female submits under the belief that the person committing the act is someone other than the accused not limited to husband/wife relationship.

FISCAL NOTE

The fiscal impact is difficult to determine with certainty, as it will depend on the increased number of offenders who are convicted of Rape, if any, under this statute. The potential impact to the general fund would be equal to the cost of imprisoning the additional number of offenders charged, convicted and sentenced as a result of this amendment.

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